IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5657 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHETH RAMANLAL MAGANLAL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/10/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Deputy Secretary, Revenue Department, State of Gujarat, dated 7th April 1990 in

Revision Application SRD No. 3/1988 in dismissing the same and confirming the order passed by the Deputy Collector, Godhra, in Fragmentation Case No. 41/1987 in declaring the sale in favour of the petitioner as illegal and invalid under Section 9(1) of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act and further directing the petitioner to remove from the land in question.

2. The petitioner had purchased the land in question by registered Sale Deed in 1974 and Entry came to be mutated in the Record of Right also in the year 1974 more particularly on 7.9.1974. Proceedings came to be initiated after a period of more than 10 years by the Deputy Collector, Godhra, for breach of Section 7 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, [hereinafter referred to as “Fragmentation Act”] and the petitioner was called upon to show cause why the sale in favour of the petitioner should not be declared as illegal and in breach of Section 7 of the Fragmentation Act. The Deputy Collector, Godhra, by order passed in Fragmentation Case No. 41 of 1987 declared the sale in favour of the petitioner as invalid and in breach of Section 7 of the Fragmentation Act and also passed an order of eviction against the petitioner under Section 9(3) of the Fragmentation Act. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Godhra, under the provisions of the

Fragmentation Act, the petitioner preferred a revision application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application SRD No. 3/1988 and the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, by order dated 7th April 1990 dismissed the said revision application confirming the order passed by the Deputy Collector, Godhra. Being aggrieved and dissatisfied with the order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, the petitioner has preferred the present petition under Article 226/227 of the Constitution of India.

3. Shri Jitendra M. Patel, learned advocate appearing on behalf of the petitioner has submitted that apart from the fact that proceedings came to be initiated after more than 10 years, i.e., after an unreasonable period, the said land was an irrigated land and an Entry to that effect was already made in the Revenue Record. Not only that, but even in the deposition the original-owner stated that it was an irrigated land and it is therefore requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP is not in a position to dispute the Entry with regard to the irrigated land in the Revenue Record. Once the land is an irrigated land the same cannot be declared as fragment land. Even otherwise, as stated above the sale transaction took place in the year 1974 and an

Entry was also mutated in the record of right in the year 1974 and proceedings came to be initiated after a period of 12 years which can be said to be after unreasonable period. In view of the Judgment of the Division Bench of this Court in the case reported in (2005) 2 GLH Page 34, the authority was not justified in initiating proceedings after unreasonable period.

5. For the reasons stated above, the petition succeeds. The judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 7th April 1990 in Revision Application SRD No. 3/88 as well as the order passed by the Deputy Collector, Godhra, in Fragmentation Case No. 41/1987 which were under the provisions of the Fragmentation Act are hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.